

1 **UNITED STATES DISTRICT COURT**
2 **EASTERN DISTRICT OF NEW YORK**

3 -----X
4 **SUSANA LOZADA,**

5 **Plaintiff,**

6 **-against-**

7 **PROG LEASING, LLC,**

8 **Defendant.**
9 -----X

CASE NO.:

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

10 **COMPLAINT**

11 SUSANA LOZADA (“Plaintiff”), by and through her attorneys, KIMMEL &
12 SILVERMAN, P.C., alleges the following against PROG LEASING, LLC. (“Defendant”):

13 **INTRODUCTION**

14 1. Plaintiff’s Complaint is based on the Telephone Consumer Protection Act, 47
15 U.S.C. § 227, *et seq.* (“TCPA”).

16 **JURISDICTION AND VENUE**

17 2. Jurisdiction of this Court arises under 28 U.S.C. § 1331, which grants this court
18 original jurisdiction of all civil actions arising under the laws of the United States. See Mims v.
19 Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

20 3. Defendant regularly conducts business in the State of New York therefore
21 personal jurisdiction is established.

22 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).
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PARTIES

5. Plaintiff is a natural persons residing in Bohemia, New York 11716.

6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

7. Defendant is a corporation with its principal office located at 10619 S. Jordan Gateway, Suite 100, South Jordan, Utah 84095.

8. Defendant is a “person” as that term is defined by 47 U.S.C. § 153(39).

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. Plaintiff has a cellular telephone number that she has had for over a year.

11. Plaintiff has only used this number as a cellular telephone number.

12. The phone number has been assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls.

13. Beginning in or around December 2014, and continuing through April 2015, Defendant called Plaintiff on her cellular telephone on a repetitive and continuous basis.

14. Defendant’s calls came from numbers including but not limited to (801) 424-7821 and (801) 424-7820.

15. When contacting Plaintiff on her cellular telephone, Defendant used an automatic telephone dialing system and automatic and/or pre-recorded messages.

16. Defendant’s telephone calls were not made for “emergency purposes.”

17. While Plaintiff has an account with Defendant, she explicitly revoked any prior consent to call her cellular telephone in early December 2014.

1 18. Despite the above, Defendant persisted in calling Plaintiff on her cellular
2 telephone for several months.

3
4 **DEFENDANT VIOLATED THE**
5 **TELEPHONE CONSUMER PROTECTION ACT**

6 19. Plaintiff incorporates the forgoing paragraphs as though the same were set forth
7 at length herein.

8 20. Defendant initiated multiple automated telephone calls to Plaintiff's cellular
9 telephone using a prerecorded voice.

10 21. Defendant initiated these automated calls to Plaintiff using an automatic
11 telephone dialing system.

12 22. Defendant's calls to Plaintiff were not made for emergency purposes.

13 23. Defendant's calls to Plaintiff, in and after December 2014, were not made with
14 Plaintiff's prior express consent.

15 24. Defendant's acts as described above were done with malicious, intentional,
16 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the
17 purpose of harassing Plaintiff.

18 25. The acts and/or omissions of Defendant were done unfairly, unlawfully,
19 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal
20 defense, legal justification or legal excuse.

21 26. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
22 and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles
23 damages.
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1 WHEREFORE, Plaintiff, SUSANA LOZADA, respectfully prays for judgment as
2 follows:

- 3 a. Statutory damages of \$500.00 per violative telephone call pursuant to 47
4 U.S.C. §227(b)(3)(B);
5 b. Treble damages of \$1,500 per violative telephone call pursuant to 47 U.S.C.
6 §227(b)(3);
7 c. Injunctive relief pursuant to 47 U.S.C. §227(b)(3); and
8 d. Any other relief deemed fair and proper by this Honorable Court.
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11 **DEMAND FOR JURY TRIAL**

12 PLEASE TAKE NOTICE that Plaintiff, SUSANA LOZADA, demands a jury trial in
13 this case.
14

15 RESPECTFULLY SUBMITTED,
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17 Dated: May 15, 2015

KIMMEL & SILVERMAN, P.C.

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